

**REPLY UNDER 37 C.F.R. 1.116  
EXPEDITED PROCEDURE  
EXAMINING GROUP 2182  
PATENT  
APPLICATION 10/622,259  
ATTORNEY DOCKET 2002P20760US01 (1009-029)**

**REMARKS**

Applicant respectfully thanks the Examiner for the consideration provided to this application, and respectfully requests reconsideration of this application.

Each of claims 1, 2, 9, 14, 26, and 27 has been amended for at least one reason unrelated to patentability, including at least one of: to explicitly present one or more elements, limitations, phrases, terms and/or words implicit in the claim as originally written when viewed in light of the specification, thereby not narrowing the scope of the claim; to detect infringement more easily; to enlarge the scope of infringement; to cover different kinds of infringement (direct, indirect, contributory, induced, and/or importation, etc.); to expedite the issuance of a claim of particular current licensing interest; to target the claim to a party currently interested in licensing certain embodiments; to enlarge the royalty base of the claim; to cover a particular product or person in the marketplace; and/or to target the claim to a particular industry.

Claims 1-32 are now pending in this application. Each of claims 1, 2, 9, 14, and 26 is in independent form.

**I. The Obviousness Rejections**

Each of claims 1-32 was rejected under 35 U.S.C. 103(a) as being obvious, and thus unpatentable, over various combinations of U.S. Patent 5,649,001 ("Thomas"), U.S. Patent 2001/0037491 ("Boggs"), U.S. Patent 6,978,319 ("Rostoker"), and/or U.S. Patent 2003/0167391 ("Al-Ali"). Each of these rejections is respectfully traversed.

**A. Legal Standards**

**1. *Prima Facie* Criteria for an Obviousness Rejection**

In *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), the Supreme Court established factors regarding the factual inquiry required to establish obviousness. The factors include:

1. determining the scope and contents of the prior art;
2. ascertaining differences between the prior art and the claims at issue;

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3. resolving the level of ordinary skill in the pertinent art; and
4. considering objective evidence indicating obviousness or nonobviousness.

The Federal Circuit has applied *Graham*'s required factual inquiry in numerous legal precedents that are binding on the USPTO.

It is recognized that most patentable inventions arise from a combination of old elements and often, each element is found in the prior art. *In re Rouffet*, 149 F.3d 1350, 1357 (Fed. Cir. 1998). In *KSR International Co. v. Teleflex Inc.*, 2007 U.S. LEXIS 4745 (2007), the United States Supreme Court clarified that:

1. "[t]he question is not whether the combination was obvious to the patentee but whether the combination was obvious to a person with ordinary skill in the art";
2. "a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art";
3. it is necessary "to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit"; and
4. "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness" (*quoting In re Kahn*, 441 F. 3d 977, 988 (Fed. Cir. 2006).

To establish a *prima facie* case of obviousness, certain criteria must be met. Evidence must be provided that indicates that the combination was obvious to a person with ordinary skill in the art. *KSR International Co. v. Teleflex Inc.*, 2007 U.S. LEXIS 4745 (2007); *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). That evidence must include an apparent reason, with a rational underpinning, to combine the known elements in the fashion claimed in the patent at issue. *KSR International Co. v. Teleflex Inc.*, 2007 U.S. LEXIS 4745 (2007). There must be a reasonable expectation of success. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); MPEP 2143. In addition, the prior art reference (or references when combined) must

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teach... all the claim limitations. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); MPEP 2143.

Moreover, the "Patent Office has the initial duty of supplying the factual basis for its rejection." *In re Warner*, 379 F.2d 1011, 154 USPQ 173, 178 (CCPA 1967), cert. denied, 389 U.S. 1057, *reh'g denied*, 390 U.S. 1000 (1968). "It may not... resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis". *Id.*

It is legal error to "substitute[] supposed *per se* rules for the particularized inquiry required by section 103. It necessarily produces erroneous results." *See, In re Ochiai*, 71 F.3d 1565, 1571, 37 USPQ2d 1127, 1132-33 (Fed. Cir. 1998); *In re Wright*, 343 F.2d 761, 769-770, 145 USPQ 182, 190 (CCPA 1965).

"Once the examiner... carries the burden of making out a *prima facie* case of unpatentability, 'the burden of coming forward with evidence or argument shifts to the applicant.'" *In re Alton*, 76 F.3d 1168, 37 USPQ2d 1578 (Fed. Cir. 1996) (*quoting In re Oetiker*, 977 F.2d at 1445, 24 USPQ2d at 1444).

**2. All Words in a Claim Must Be Considered**

"To establish *prima facie* obviousness..., '[a]ll words in a claim must be considered'". MPEP 2143.03, *quoting In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970); *see also, In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974); *In re Wilder*, 429 F.2d 447, 166 USPQ 545, 548 (CCPA 1970); *In re Angstadt*, 537 F.2d 498, 190 USPQ 214, 217 (CCPA 1976); *In re Geerdes*, 491 F.2d 1260, 180 USPQ 789, 791 (CCPA 1974).

**3. Lack of Evidence of Reasons for Combining References**

Under the *Graham* analysis, the "examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness." MPEP 2142. The requirements for meeting this burden are clear.

To factually support a *prima facie* conclusion of obviousness, an Office Action must provide evidence that indicates that the combination was obvious to a person with ordinary skill

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in the art. The evidence must include an apparent reason, with a rational underpinning, to combine the known elements in the fashion claimed in the patent at issue. “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness” *KSR International Co. v. Teleflex Inc.*, 2007 U.S. LEXIS 4745 (2007) (quoting *In re Kahn*, 441 F. 3d 977, 988 (Fed. Cir. 2006)).

**4. The Applied Reference(s) Must Be Enabling**

“In order to render a claimed apparatus or method obvious, the prior art must enable one skilled in the art to make and use the apparatus or method.” *Rockwell Int’l Corp. v. U.S.*, 147 F.2d 1358, 47 USPQ2d 1027 (Fed. Cir. 1998); *Motorola, Inc. v. Interdigital Tech. Corp.*, 121 F.3d 1461, 1471, 43 USPQ2d 1481, 1489 (Fed. Cir. 1997); *Beckman Instruments, Inc. v. LKB Produkter AB*, 892 F.2d 1547, 1551, 13 USPQ2d 1301, 1304 (Fed. Cir. 1989); *In re Johnston*, 435 F.3d 1381 (Fed. Cir. 2006).

**5. Next Office Action**

If an Office Action fails to set forth sufficient facts to provide a *prima facie* basis for the rejections, any future rejection based on the applied reference will necessarily be factually based on an entirely different portion of that reference, and thus will be legally defined as a “new grounds of rejection.” Consequently, any Office Action containing such rejection can not properly be made final. See, *In re Wiechert*, 152 USPQ 247, 251-52 (CCPA 1967) (defining “new ground of rejection” and requiring that “when a rejection is factually based on an entirely different portion of an existing reference the appellant should be afforded an opportunity to make a showing of unobviousness vis-a-vis such portion of the reference”), and *In re Warner*, 379 F.2d 1011, 154 USPQ 173, 178 (CCPA 1967) (the USPTO “has the initial duty of supplying the factual basis for its rejection”).

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**B. Analysis**

**1. Claims 1-25**

**a. *Prima Facie* Criteria**

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

**b. Missing Claim Limitations**

Each of independent claims 1, 2, 9, 14, from one of which each of claims 3-8, 10-13, and 15-25 ultimately depends, states, *inter alia*, yet no substantial evidence has been presented that the applied portions of Boggs teach, "said programmable cable adapted to store" "a plurality of configuration parameters", that comprise "a mode switch parameter adapted to cause a **mode switch of said programmable cable** to select between a Freeport mode and a PPI mode". The present Office Action presents no substantial evidence that the applied portions of Boggs teach any "mode switch" of any "cable" whatsoever. Instead, the applied portions of Boggs states, at paragraphs 263-264 and 331 (emphasis added):

[0263] The present invention provides free port operation of the **communications port**, hereinafter 'freeport', that allows the user to control the port either manually or by operation of a user program. The procedure of freeport operation is shown in FIG. 30a.

[0264] In the instant invention, the user implements free-port (step S3000) use by forcing an **interrupt (step S3002) of the PLC** according to the afore-described interrupt architecture. In this case, the user initiates freeport communication while operating the PLC in master mode by attaching an interrupt event that will pass control of the **communications port** to the user program (step S3004). This is performed while the system protocol holds the token (step S3006) ...

[0331] Loading of a new operating system can be accomplished by directly connecting a personal computer to the PLC using a PC/PPI cable. Use of PROFIBUS cards installed in a personal computer or part of a PG are not

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preferred because of the complexity of the PROFIBUS protocol which is the only protocol that can be used with these devices.

The present Office Action presents no evidence that the applied portions of Boggs teach any "mode switch" of any "cable" whatsoever. Thus, no evidence is presented that the applied portions of Boggs teach, "said programmable cable adapted to store" "a plurality of configuration parameters", that comprise "a mode switch parameter adapted to cause a **mode switch of said programmable cable** to select between a Freeport mode and a PPI mode".

The applied portions of Thomas fail to cure at least these deficiencies of the applied portions of Boggs.

In response to this previously presented persuasive argument, the present Office Action asserts, at Page 15 (emphasis added):

As per the Applicant's arguments, the Examiner respectfully disagrees. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In reference to the limitations argued by the Applicant, the Examiner notes that Boggs is relied upon for a Freeport mode and PPI mode. As cited in the previous action Boggs teaches a switching of a Freeport PPI mode in paragraph [00268], which provides a detailed description of step S3012 of figure 30a that shows a switching of a Freeport - PPI mode. As best understood by the specification of the current application, paragraphs [0011-0013], a Freeport mode is a variation of a first PPI and second PPI protocol. **Teachings of a programmable cable are relied upon from Thomas.** Clearly one of ordinary skill in the art would recognize that Boggs teaches a mode switching of Freeport PPI mode.

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The MPEP states (emphasis added) that where "a claim is refused for any reason relating to the merits thereof it should be 'rejected' and the ground of rejection **fully and clearly stated.**" See MPEP 707.07(d).

It is respectfully submitted that the claim rejections of the present Office Action, in view of the assertions of Page 15 fail to comply with the requirements of MPEP 707.07(d) regarding any of claims 1-25. For example, regarding claim 1, the present Office Action states, at Page 3 (emphasis added):

**Boggs teaches** the plurality of configuration parameters comprising a mode switch parameter adapted to cause a mode switch of said programmable cable (PLC attached to cable, paragraph [0331]) connectable to a programmable logic controller (PLC) to select between a Freeport mode and a PPI mode (paragraphs [0263 - 0268] describe switching between the two modes).

This grounds of rejection is repeated regarding claim 2 (see Pages 4-5), claim 9 (see Page 5), and claim 14 (see Pages 6-7). Thus, the present Office Action purports to reject "said programmable cable adapted to store" "a plurality of configuration parameters", that comprise "a mode switch parameter adapted to cause a mode switch of said programmable cable to select between a Freeport mode and a PPI mode" based upon the applied portions of Boggs. Yet the assertions at Page 15 of the present Office Action purport to reject that claimed subject matter on the basis of some unknown and unspecified portion of Thomas. Thus, the present Office Action fails to fully and clearly state the grounds of rejection for each of claims 1-25.

Applicant further notes, as a substantive matter, that the present Office Action presents no evidence that the applied portions of Thomas teach any "mode switch" of any "cable" whatsoever. Thus, the assertions of the present Office Action regarding any alleged "attacking" of "references individually" are misplaced since the present Office Action fails to present any substantial evidence that the applied portions of the relied-upon references, taken alone or in combination, teach "said programmable cable adapted to store" "a plurality of configuration parameters", that comprise "a mode switch parameter adapted to cause a mode switch of said programmable cable to select between a Freeport mode and a PPI mode".

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In addition, each rejection of each of claims 1-25 is traversed as moot in view of the present amendments to each of independent claims 1, 2, 9, and 14. Specifically, each of independent claims 1, 2, 9, 14, from one of which each of claims 3-8, 10-13, and 15-25 ultimately depends, states, *inter alia*, yet no substantial evidence has been presented that the applied portions of the relied-upon references teach, "said mode switch distinct from said PLC, a memory of said programmable cable distinct from said PLC".

Thus, even if there were proper evidence of obviousness presented in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach every limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

**c. Lack of Evidence of Obviousness**

Applicant respectfully notes that the present Office Action fails to evidence the scope and contents of the prior art as required under *Graham*. The present Office Action fails to even identify what "the pertinent art" is. Moreover, the present Office Action fails to evidence the level of ordinary skill in the pertinent art.

Applicant respectfully traverses the failure of the present Office Action to comply with the requirements of *Graham* and thereby, to provide a *prima facie* rejection under 35 U.S.C. 103.

**d. Conclusion**

For at least these reasons, a reconsideration and withdrawal of each rejection of each of claims 1-25 is respectfully requested.



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ATTORNEY DOCKET 2002P20760US01 (1009-029)**2. Claims 26-32****a. *Prima Facie* Criteria**

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

**b. Missing Claim Limitations**

Independent claim 26, from which each of claims 27-32 ultimately depends, states, *inter alia*, yet the applied portions of Boggs do not teach, “automatically communicating from the **programmable cable** to the network communications device a PIN number and at least one of a plurality of configuration parameters, the plurality of configuration parameters comprising a **mode switch parameter** adapted to cause a mode switch of said programmable cable to select between a Freeport mode and a PPI mode”. The applied portions of Boggs do not teach, “communicating” any “mode switch parameter” from any “cable” whatsoever. Instead, the applied portions of Boggs states, at paragraphs 263-264 and 331 (emphasis added):

[0263] The present invention provides free port operation of the **communications port**, hereinafter ‘freeport’, that allows the user to control the port either manually or by operation of a user program. The procedure of freeport operation is shown in FIG. 30a.

[0264] In the instant invention, the user implements free-port (step S3000) use by forcing an **interrupt (step S3002) of the PLC** according to the afore-described interrupt architecture. In this case, the user initiates freeport communication while operating the PLC in master mode by attaching an interrupt event that will pass control of the **communications port** to the user program (step S3004). This is performed while the system protocol holds the token (step S3006) ...

[0331] Loading of a new operating system can be accomplished by directly connecting a personal computer to the PLC using a PC/PPI cable. Use of

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PROFIBUS cards installed in a personal computer or part of a PG are not preferred because of the complexity of the PROFIBUS protocol which is the only protocol that can be used with these devices.

The present Office Action presents no evidence that the applied portions of Boggs teach, "communicating" any "mode switch parameter" from any "cable" at all. Thus, no evidence is presented that the applied portions of Boggs teach, "automatically communicating from the **programmable cable** to the network communications device a PIN number and at least one of a plurality of configuration parameters, the plurality of configuration parameters comprising a **mode switch parameter** adapted to cause a mode switch of said programmable cable to select between a Freeport mode and a PPI mode".

The applied portions of Thomas fail to cure at least these deficiencies of the applied portions of Boggs.

In response to this previously presented persuasive argument, the present Office Action asserts, at Page 15 (emphasis added):

As per the Applicant's arguments, the Examiner respectfully disagrees. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In reference to the limitations argued by the Applicant, the Examiner notes that Boggs is relied upon for a Freeport mode and PPI mode. As cited in the previous action Boggs teaches a switching of a Freeport PPI mode in paragraph [00268], which provides a detailed description of step S3012 of figure 30a that shows a switching of a Freeport - PPI mode. As best understood by the specification of the current application, paragraphs [0011-0013], a Freeport mode is a variation of a first PPI and second PPI protocol. **Teachings of a programmable cable are relied upon from Thomas.** Clearly one of ordinary

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skill in the art would recognize that Boggs teaches a mode switching of Freeport PPI mode.

The MPEP states (emphasis added) that where "a claim is refused for any reason relating to the merits thereof it should be 'rejected' and the ground of rejection **fully and clearly stated.**" See MPEP 707.07(d).

It is respectfully submitted that the claim rejections of the present Office Action, in view of the assertions of Page 15 fail to comply with the requirements of MPEP 707.07(d) regarding any of claims 26-32. Regarding claim 26, the present Office Action states, at Page 7 (emphasis added):

**Boggs teaches** the plurality of configuration parameters comprising a mode switch parameter adapted to cause a mode switch of said programmable cable (cable, paragraph [0331]) to select between a Freeport mode and a PPI mode (paragraphs [0263 - 0268] describe switching between the two modes).

Thus, the present Office Action purports to reject "automatically communicating from the programmable cable to the network communications device a PIN number and at least one of a plurality of configuration parameters, the plurality of configuration parameters comprising a **mode switch parameter** adapted to cause a **mode switch of said programmable cable** to select between a Freeport mode and a PPI mode" based upon the applied portions of Boggs. Yet the assertions at Page 15 of the present Office Action purport to reject that claimed subject matter on the basis of some unknown and unspecified portion of Thomas. Thus, the present Office Action fails to fully and clearly state the grounds of rejection for claim 26, and consequently for each of claims 27-32, each of which ultimately depends from claim 26.

Applicant further notes, as a substantive matter, that the present Office Action presents no evidence that the applied portions of Thomas teach any "mode switch" of any "cable" whatsoever. Thus, the assertions of the present Office Action regarding any alleged "attacking" of "references individually" are misplaced since the present Office Action fails to present any substantial evidence that the applied portions of the relied-upon references, taken alone or in combination, teach "automatically communicating from the programmable cable to the network

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communications device a PIN number and at least one of a plurality of configuration parameters, the plurality of configuration parameters comprising a mode switch parameter adapted to cause a **mode switch of said programmable cable** to select between a Freeport mode and a PPI mode”.

In addition, each rejection of each of claims 26-32 is traversed as moot in view of the present amendments to independent claim 26. Specifically, independent claim 26, from which each of claims 27-32 ultimately depends, states, *inter alia*, yet no substantial evidence has been presented that the applied portions of the relied-upon references teach, “said mode switch distinct from said PLC, a memory of said programmable cable distinct from said PLC”.

Thus, even if there were proper evidence of obviousness presented in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the references relied upon in the Office Action, **as attempted to be modified and/or combined**, still do not expressly or inherently teach every limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

**c. Lack of Evidence of Obviousness**

Applicant respectfully notes that the present Office Action fails to evidence the scope and contents of the prior art as required under *Graham*. The present Office Action fails to even identify what “the pertinent art” is. Moreover, the present Office Action fails to evidence the level of ordinary skill in the pertinent art.

Applicant respectfully traverses the failure of the present Office Action to comply with the requirements of *Graham* and thereby, to provide a *prima facie* rejection under 35 U.S.C. 103.

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**d. Conclusion**

For at least these reasons, a reconsideration and withdrawal of each rejection of each of claims 26-32 is respectfully requested.

**II. The Present Office Action Fails to Respond to All of Applicant's Arguments**

A proper Office Action must be complete as to all matters, must provide a clear explanation of all actions taken, and must answer in detail the substance of each of Applicant's submitted arguments. *See* MPEP 707.07(f).

In response to an Office Action dated 19 April 2007, Applicant filed a proper Reply on 19 July 2007 ("the Reply"), which is incorporated herein by reference. In traversing a rejection of each of claims 1-32, Applicant presented the following argument that stands unopposed in the present Office Action (see pages 15 and 17 of the Reply):

Applicant respectfully notes that the present Office Action fails to evidence the scope and contents of the prior art as required under *Graham*. The present Office Action fails to even identify what "the pertinent art" is. Moreover, the present Office Action fails to evidence the level of ordinary skill in the pertinent art. Applicant respectfully traverses the failure of the present Office Action to comply with the requirements of *Graham* and thereby, to provide a *prima facie* rejection under 35 U.S.C. 103.

The present Office Action fails to respond whatsoever to this previously presented and persuasive argument.

**III. The Finality of the Office Action is Improper, Premature, and should be Withdrawn**

A proper Office Action must be complete as to all matters, must provide a clear explanation of all actions taken, and must answer in detail the substance of each of Applicant's submitted arguments. *See* MPEP 707.07(f).

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The grounds of rejection of each of claims 1-32 is not clear since the present Office Action asserts at Page 3, for example, regarding claim 1 (emphasis added) (similar assertions are made regarding each of independent claims 2, 9, 14, and 26 as indicated, *supra*):

**Boggs teaches** the plurality of configuration parameters comprising a mode switch parameter adapted to cause a mode switch of said programmable cable (PLC attached to cable, paragraph [0331]) connectable to a programmable logic controller (PLC) to select between a Freeport mode and a PPI mode (paragraphs [0263 - 0268] describe switching between the two modes).

Yet at Page 15, the present Office Action appears to assert that Boggs is not relied upon as teaching this claimed subject matter. Instead, the present Office Action asserts (emphasis added) at Page 15:

In reference to the limitations argued by the Applicant, the Examiner notes that Boggs is relied upon for a Freeport mode and PPI mode. As cited in the previous action Boggs teaches a switching of a Freeport PPI mode in paragraph [00268], which provides a detailed description of step S3012 of figure 30a that shows a switching of a Freeport - PPI mode. As best understood by the specification of the current application, paragraphs [0011-0013], a Freeport mode is a variation of a first PPI and second PPI protocol. **Teachings of a programmable cable are relied upon from Thomas.** Clearly one of ordinary skill in the art would recognize that Boggs teaches a mode switching of Freeport PPI mode.

It is thus unclear, for example regarding claim 1, whether the claimed subject matter of **“said programmable cable adapted to store” “a plurality of configuration parameters”, that comprise “a mode switch parameter adapted to cause a mode switch of said programmable cable to select between a Freeport mode and a PPI mode”** is being rejected based upon the portions of Boggs applied at Page 3 or some unknown and unspecified portion of Thomas as indicated at Page 15.

In addition, Applicant respectfully submits that the present Office Action fails to respond to all of Applicant's arguments. In traversing a rejection of each of claims 1-32, Applicant

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presented the following argument that stands unopposed in the present Office Action (see pages 15 and 17 of the Reply):

Applicant respectfully notes that the present Office Action fails to evidence the scope and contents of the prior art as required under *Graham*. The present Office Action fails to even identify what "the pertinent art" is. Moreover, the present Office Action fails to evidence the level of ordinary skill in the pertinent art. Applicant respectfully traverses the failure of the present Office Action to comply with the requirements of *Graham* and thereby, to provide a *prima facie* rejection under 35 U.S.C. 103.

Since the rejections of each of claims 1-32 are not clear and the present Office Action fails to respond to all of Applicant's arguments, Applicant respectfully submits that the finality of the 19 April 2007 Office Action is premature. Thus, Applicant respectfully requests that the finality of the 19 April 2007 Office Action be withdrawn.

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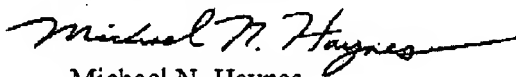
**CONCLUSION**

It is respectfully submitted that the application is in clear condition for allowance. Reconsideration, withdrawal of all grounds of rejection, and issuance of a Notice of Allowance are earnestly solicited.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. 1.16 or 1.17 to Deposit Account 50-2504. The Examiner is invited to contact the undersigned at 434-972-9988 to discuss any matter regarding this application.

Respectfully submitted,

Michael Haynes PLC



Date: 19 December 2007

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